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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,290	01/27/2004	David Q. Dobras	0059-014P1	9338

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EXAMINER

PENDLETON, DIONNE

ART UNIT	PAPER NUMBER
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2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/766,290

Applicant(s)

DOBRAS ET AL.

Examiner

Dionne H. Pendleton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/27/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claim 24** is rejected under 35 U.S.C. 102(b) as being anticipated by **Boyden (US 5,737,436)**.

Regarding claim 24, in **figure 1**, Boyden teaches a communications earpiece improvement comprising: a connection tube **(14)** for connecting and acoustically coupling a transducer enclosure **(10)** to an ear bud **(20)**; and

In **Figure 2**, an elongated projection **(30)** for insertion into the connecting tube **(14)**;

Since Boyden teaches that the projection **(30)** is slid into tube **(14)**, and neglects to teach an mechanism for limiting the rotational movement of projection **(30)** within tube **(14)**, **figure 2** is interpreted as teaching that the connecting tube **(14)** can be rotated about the elongated projection, via rotational force applied by the wearer; and

Further wherein **Figure 2** illustrates that the end of the connecting tube **(18)** can be moved along the length of the elongated projection **(30)**, note that **figure 2** illustrates that the connecting tube **(14,18)** is disposed at the mid-length portion of projection **(30)**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Taenzer (US 6,009,183)** in view of **Boyden (US 5,737,436)**.

Regarding claim 1, TAENZER teaches a communication earpiece comprising:
A transducer enclosure portion **(22)** having a transducer housed therein (see **column 3, lines 5-7**); in **column 4, lines 27-30**, Taenzer teaches a sound horn **(16)**; and a generally tubular connection member **(14)** for channeling sound from the transducer enclosure portion to the sound horn **(16)**; wherein **column 3, lines 28-32** teaches a connection member **(16)** having a first adjustment means **(30)** for allowing rotation of the connection member relative to the transducer enclosure portion.

TAENZER does not clearly teach a second adjustment means allowing movement of the sound horn selectively toward or away from the transducer enclosure portion.

BOYDEN teaches, in **figure 2**, a second adjustment means **(18,30)** for connecting a sound horn **(20)** to a connection member **(18)**, wherein the second adjustment means **(18,30)** allows movement of the sound horn (via smooth inner and outer surfaces of articles **18 and 30**, respectively) selectively toward and/or away from the transducer enclosure via sliding motion, see **figure 2** which illustrates that the

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connecting tube (14,18) is disposed at the mid-length portion of projection (30). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Taenzer and Boyden, substituting the sound horn/sound tube connection (18,30) structure taught by **figure 2** of Boyden, for that of Taenzer, which would provide a releasable connection thus permitting the exchange of eartips so as to enable a more comfortable fit for the user, if so desired.

Regarding claim 2, Taenzer teaches a first adjustment means including a generally hollow projection (32) on the transducer enclosure and a hollow cylindrical end portion (30) on the connection member (14).

Regarding claims 3 and 4, in **figure 2**, Taenzer teaches that the cylindrical end portion (30) is rotatably affixed to the cylindrical projection (32).

Regarding claim 5, in **figure 2**, Boyden teaches a second adjustment means including a hollow projection (30) on the sound horn (20) and a hollow cylindrical end portion (18) on the connection member (14).

Regarding claims 6 and 7, in **figure 2**, Boyden teaches that the cylindrical end portion (18) is slidably affixed to the cylindrical projection (30) permitting the longitudinal movement of the cylindrical end portion (18) along at least a portion of the length of the cylindrical projection (30).

Regarding claims 8 and 9, Taenzer teaches a cylindrical end portion (30) rotatably affixed to the cylindrical projection (32), see **column 5, lines 1-2**.

Regarding claim 10, **figure 2** of Boyden teaches a third adjustment means (articles 18 and 30 having smooth inner and outer surfaces, respectively; additionally

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rotational adjustment is achieved via rotational force externally applied by the user) for allowing the rotation of the sound horn in relation to the connection member. Note, that Boyden teaches that the projection (30) is slid into tube (14), and neglects to teach an mechanism for limiting the rotational movement of projection (30) within tube (14), **figure 2** is interpreted as teaching that the connecting tube (14) can be rotated about the elongated projection, via rotational force applied by the wearer.

Regarding claim 11, Boyden teaches a second adjustment means (18,30) and third adjustment means (articles 18 and 30 having smooth inner and outer surfaces, respectively; also see rotational force) which are a single connection; wherein the connection includes a hollow cylindrical projection (30) on the sound horn (20) and a hollow cylindrical end portion (18) on the connection member (14).

Regarding claims 12 and 13, Boyden teaches a cylindrical end portion (18) slidably affixed to a cylindrical projection (30) such that the end portion (18) can be moved longitudinally along a portion of the length of the cylindrical projection.

Regarding claims 14 and 15, Boyden teaches a cylindrical end portion (18) rotatably affixed to the cylindrical projection (30).

Regarding claim 16, Taenzer teaches a connection member (14) being bent (48) such that the connection member can rotate in relation to the transducer enclosure; while in **figure 2**, Boyden teaches that the sound horn (20) can rotate in relation to the connection member (14) about a second axis via applied rotational force.

Regarding claim 17, both Taenzer and Boyden teach that the transducer enclosure portion is adapted for hooking over the top of the user's ear.

Regarding claims 18 and 22, Taenzer teaches a transducer enclosure portion (22) and transducer housed within said transducer portion; a sound horn (16); a connection member (14); a first generally hollow projection (32) on the transducer enclosure; and a connection member (14) rotatably affixed to the first generally hollow projection (32); while Boyden teaches a sound horn (20) having a second generally hollow projection (30); and a connection member (14) rotatably affixed at the other end (18) to the second generally hollow projection (30). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Taenzer and Boyden, substituting the sound horn/sound tube connection (18,30) structure taught by **figure 2** of Boyden, for that of Taenzer, which would provide a releasable connection thus permitting the exchange of eartips so as to enable a more comfortable fit for the user, if so desired.

Regarding claim 19, Taenzer teaches that one end (30) of the connection member (14) fits over the first generally hollow projection (32); while Boyden teaches that the other end of the connection member (18) fits over the second generally hollow projection (30).

Regarding claim 20, Taenzer teaches a connection member (14) being bent (48) such that the connection member can rotate in relation to the transducer enclosure; while in **figure 2**, Boyden teaches that the sound horn (20) can rotate in relation to the connection member (14) about a second axis via applied rotational force.

Regarding claim 21, Boyden teaches that the second generally hollow projection (30) is elongated such that the connection member (18) can be moved along at least a portion of its' length.

Regarding claim 23, Taenzer teaches a transducer enclosure (22) including a transducer housed within; and a sound horn (16); while the combined teachings of Taenzer and Boyden anticipate a mechanical arrangement wherein the sound horn is adjustable in all three physical dimensions.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

SCHLAEGEL (US 5,975,235) teaches BTE structure.

STEVENS (US 4,864,610) teaches headset earpiece.

FRETZ (US 7,027,608) teaches a BTE structure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne H. Pendleton whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Dionne Pendleton


EXAMINER
MARCH 5, 2007